UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31

CELLCO PARTNERSHIP,
d/b/a VERIZON WIRELESS [1/]

Employer

and

Case 31-RC-8072

COMMUNICATIONS WORKERS OF AMERICA,
AFL-CIO [2/]

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. [3/]

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.[4/]

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of the Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act: [5/]

INCLUDED: All full-time and regular part-time retail sales representatives and assistants-sales operations ("ASO") employees employed by the Employer at its facilities in Bakersfield, California, located at 1220 Oak Street, Suite M; 4550 Coffee Road; and 2701 Ming Avenue.

EXCLUDED: All other employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION [6/]

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have

not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether they desire to be represented for collective bargaining purposes by **COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO.**

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co*., 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that an election eligibility list, containing the **FULL** names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director within 7 days of the date of the Decision and Direction of Election. The list must be of sufficiently large type to be clearly legible. This list may initially be used by the Regional Director to assist in determining an adequate showing of interest. He shall, in turn, make the list available to all parties to the election, only after he has determined that an adequate showing of interest among the employees in the unit found appropriate has been established.

In order to be timely filed, such list must be received in the Regional Office, 11150 West Olympic Blvd., Suite 700, Los Angeles, California 90064-1824, on or before**, March 25, 2002**. No extension of time to file this list may be granted, nor shall the filing

of a request for review operate to stay the filing of such list except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission. Since the list is to be made available to all parties to the election, please furnish a total of 2 copies, unless the list is submitted by facsimile, in which case no copies need be submitted. To speed the preliminary checking and the voting process itself, the names should be alphabetized (overall or by department, etc.).

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by **April 1, 2002** .

DATED at Los Angeles, California this 18th day of March 2002.

/s/ James J. McDermott
James J. McDermott, Regional Director
National Labor Relations Board
Region 31

FOOTNOTES

1/ The name of the Petitioner appears as set forth in the amendment to the Petition. See discussion below in Footnote 3.

2/ The Employer's name appears as corrected at the Hearing.

3/ The Petition was filed by Communications Workers of America Local 9416. At the Hearing, the Hearing Officer permitted the Petitioner to amend the Petition to change the name of the Petitioner to Communications Workers of America, AFL-CIO. The Employer moved to dismiss the Petition due to the absence of a representative of Communications Workers of America Local 9416. An attorney, who is the District Counsel for the Communication Workers of America, District 9, AFL-CIO, appeared at the Hearing on behalf of "the Petitioner." Thus, the Petitioner, whether its identity be Communications Workers of America Local 9416 before the amendment, or its identity be Communications Workers of America, AFL-CIO after the amendment, was represented by Ms. Belsito at the Hearing. Therefore, I affirm the Hearing Officer's denial of the Employer's motion to dismiss.

The Employer also objected to the Hearing Officer's ruling that the Petitioner could amend the Petition with respect to the name of the Petitioner. The cases cited by the Employer in support of its position, *The Gas Service Co.*, 213 NLRB 932 (1974) and *M.A. Norden Co.*, 159 NLRB 1730 (1966), are distinguishable from the situation here in that those cases arose in the context of a labor organization seeking to amend certifications to substitute one labor organization for another. In *Norden,* the Board specifically noted that there was no evidence that the employees had knowledge of, or consented to, the proposed change. In fact, although the Board in *Norden* denied the petition to amend the certification, it did so without prejudice to further consideration upon a showing of consent by the employees in the unit. In the case here, the Petitioner sought to amend the petition at the pre-election Hearing. Obviously, in these circumstances, the employees will be aware of the identity of the Petitioner at the time they vote as to whether or not they want to be represented by the Petitioner.

Section 101.18(a) of the Board's rules and Regulations, series 8, as amended, provides that a petition may be amended during a pre-election hearing in the discretion of the Hearing Officer upon such terms as he or she deems just. In the circumstances here, I affirm the decision of the Hearing Officer to permit the amendment of the Petition with respect to the name of the Petitioner. In this regard, I also note that I have reexamined the showing of interest in light of the amendment and have administratively determined that the showing of interest is adequate.

4/ The Employer, Cellco Partnership, d/b/a Verizon Wireless, is a Delaware general partnership, with a principal office located in Bedminster, New Jersey, where it is engaged in the business of providing wireless telecommunications services. The Employer operates numerous facilities throughout the United States, including three facilities in Bakersfield California. Within the last twelve months, a representative period, the Employer's gross revenues have exceeded $500,000, and during this same period of time, the Employer purchased and received goods, supplies, and materials valued in excess of $50,000 directly from enterprises located outside the State of California. Thus, the Employer satisfies the statutory jurisdictional requirement as well as the Board's discretionary standard for asserting jurisdiction over communication enterprises. *General Telephone & Electronics Communications,* 160 NLRB 1192, 1193 fn.5 (1966).

5/ The Employer, Cellco Partnership d/b/a Verizon Wireless, was formed in April 2000. The Employer has taken over the assets of various other wireless companies that are referred to in the record as "legacy companies." The Employer sells wireless telephones and accessories and provides wireless communication services in every state except Alaska. The Employer has approximately 40,000 employees throughout the country and has about 29.4 million customers. It operates about 1,220 company stores and kiosks throughout the United States. Kiosks are stores without four walls located within the confines of a shopping mall.

The Petitioner seeks to represent retail sales representatives and assistant sales operations employees ("ASOs") at the Employer's three retail facilities in Bakersfield: a store on Oak Street; a store on Coffee Road; and a kiosk in the Bakersfield Valley Plaza. There are approximately 29 employees in the unit sought by the Petitioner: 12 retail sales representatives and 7 ASOs at the Oak Street Store; 3 retail sales representatives and 2 ASOs at the Coffee Road Store; and 5 retail sales representatives at the Valley Plaza kiosk. The retail sales representatives sell products and services to new and existing customers. The ASOs assist existing customers with questions they have about bills, rate plans, and handset performance. They also assist the Store Managers in administering the store. For example, they may assist in opening and closing the store, controlling the inventory and maintaining the facility. Although the Employer agrees that the unit should be comprised of retail sales representatives and ASOs, the Employer asserts that petitioned-for unit is not appropriate because the smallest appropriate unit would include employees at all stores in the Employer's West Area.

Prior to March 2001, the Employer divided its operations into seven administrative areas. In March 2001, the Employer consolidated its operations into four separate areas. The Bakersfield facilities are located in the West Area, which encompasses all, or parts of, the states of Montana, Idaho, Oregon, Washington, Wyoming, Utah, Colorado, New Mexico, Arizona, Nevada, California and Hawaii. The headquarters for the West Area is in Irvine, California. Within the West Area,
the Employer operates various types of facilities, including the West Area office; regional sales offices; cell sites (technical tower facilities); switching centers;

7 call centers (handling in-bound calls from customers); technical offices; and 311 retail stores and kiosks. There are 10,000 employees in the West Area, 2500-3300 of whom work at stores or kiosks.

The West Area is divided into six regions: Desert Mountain; Hawaii; Mountain; Northern California/Nevada; Pacific Northwest and Southern California. The Bakersfield facilities are located in the Northern California/Nevada Region. The headquarters for the Northern California/Nevada Region is located in San Ramon, California. Within California, the stores in the Northern California/ Nevada Region extend over an area as far south as Santa Barbara and as far north as Redding. The Northern California/Nevada Region also includes three stores in Nevada. There are 69 stores and kiosks and about 660 retail sales representatives and ASOs in the Northern California/Nevada Region.

There is a Retail Director of Stores for the Northern California/Nevada Region, who reports to the Regional President. In the Northern California/Nevada Region, there are 7 District Managers who report to the Retail Director of Stores. The District Managers assist the Retail Director of Stores in overseeing the operations of the retail stores and kiosks in a district. The District Manager who is responsible for the Bakersfield stores also is responsible for 8 other stores that are located as far north as Merced, which is about 200 miles from Bakersfield. Within the Northern California/Nevada Region, the closest store to Bakersfield is in Visalia, which is about 65 miles from Bakersfield. The three stores in Bakersfield are within proximity of each other. The kiosk at the Bakersfield Valley Plaza is about 3 to 4 miles from the Oak Street store and the Coffee Road store is about 8 to 9 miles from the Oak Street store.

There is a Store Manager for each of the Bakersfield stores and the kiosk. In addition, the two stores also have an Assistant Store Manager. The Store Managers directly supervise the day-to-day operations of the stores. There has been some interchange and overlap between the Store Managers and Assistant

Store Managers at the Bakersfield facilities. When the Coffee Road store opened, the Assistant Manager from the Oak Street store was assigned to manage that new store. The Manager of the Valley Plaza kiosk also served as an Acting Manager for the Oak Street store when the Oak Street Manager went on an extended medical leave. In fact, although the Employer recently assigned somebody else to the store manager position at Oak Street, the Store Manager of the kiosk continues to maintain an office at the Oak Street Store. The Employer expects that when the prior Store Manager for the Oak Street store returns from his medical leave, he will become the Store Manager for the Coffee Road store and the Coffee Road Manager will become an Assistant Manager at Oak Street.

The Act does not require that a bargaining unit be the *most* appropriate unit, only that it be *an* appropriate unit. Moreover, in representation proceedings, the unit sought by the union-petitioner is always a relevant consideration. *Lundy Packing Co.,* 314 NLRB 1042, 1043 (1994). However, in the public utility industry, the Board has long considered systemwide units to be optimal, notwithstanding the fact that the union seeks to represent employees in a smaller unit. *New England Telephone & Telegraph Co.,* 280 NLRB 162, 164 (1986), citing *New England Telephone & Telegraph Co.,* 90 NLRB 639 (1950), *Baltimore Gas & Electric Co.,* 206 NLRB 199 (1973), and *Gulf States Telephone Co.*, 118 NLRB 1039 (1957). The basis for the conclusion that systemwide units are optimal in the public utility industry was explained as follows by the Board in *Baltimore Gas & Electric,*

> That judgment has plainly been impelled by the economic reality that the public utility industry is characterized by a high degree of interdependence of its various segments and that the public has an immediate and direct interest in the maintenance of the essential services that his industry alone can adequately provide. The Board has therefore been reluctant to fragmentize a utility's operations…

206 NLRB at 201.

Nevertheless, the Board's preference for systemwide units at public utilities is not an absolute prohibition of smaller units. *PECO Energy Co.*, 322 NLRB 1074, 1079-1080 (1997). The Board does not hesitate to find a less than systemwide unit to be appropriate when there is no history of bargaining on a broader basis for the requested employees, the employees work in a distinct administrative or geographic subdivision, and the employees enjoy a community of interest sufficient to make separate bargaining for them a feasible undertaking. *Southern California Water Company,* 228 NLRB 1296 (1977). In making this determination, the Board considers whether a less than systemwide unit would disturb the employer's ability to perform its necessary functions. *Arizona Public Service Co.,* 256 NLRB 400, 401 (1981).

The Employer asserts that the Board's systemwide presumption with respect to bargaining units for public utilities should be applied to the unit herein since the wireless industry is highly regulated and is considered to be a public utility under California law and considered to be a common carrier under federal law. At the Hearing, the Employer presented James McTarnaghan as a witness and asked that the Hearing Officer find him to be an expert witness. The Hearing Officer deferred that question to me. Mr. McTarnaghan is a partner in a law firm specializing in public utilities law. He represents wireless carriers, including the Employer, in regulatory proceedings and he is the regulatory counsel for an association of wireless carriers with respect to regulatory proceedings.

Mr. McTarnaghan testified that it is his opinion that the wireless industry is comprehensively regulated because it is essential to modern life and public safety. I do not find it necessary to rely upon this opinion testimony or to determine whether or not he should be considered to be an expert witness. However, consistent with his testimony, the record establishes and I find that pursuant to the California Public Utilities Code, wireless companies are considered to be public utilities and that federal, state and local governments extensively regulate the wireless industry. I also find that governmental entities are recognizing the increasing importance of wireless communications to public safety, especially in

light of the role it played
in recent disasters, including the terrorist activities on September 11, 2001. In response to the terrorist acts of September 11, 2001, the federal government issued a request that wireless communications providers afford law enforcement and public safety officials a priority access service in emergency situations and a plan is being developed to assure wireless service in connection with a National Security/Emergency Preparedness program.

For the reasons set forth below, I conclude that even if I were to apply the public utility presumption that systemwide units are optimal to this employer, who provides wireless services, I still would conclude that the petitioned-for unit of the three Bakersfield facilities would be an appropriate unit. Therefore, it is not necessary for me to determine whether or not the public utility presumption should be extended to employers in the wireless industry.

The Employer sells its product by various means that it refers to as “channels.” The channels include direct sales (including business to business), retail sales, tele-marketing sales and indirect sales (through stores not owned by the Employer, such as Radio Shack and Best Buy). All of the Employer’s retail stores and kiosks have similar layouts to the Employer’s retail stores and kiosks in other areas. They carry the same products, including handsets (wireless telephones) and accessories (such as carrying cases, hands-free sets, re-chargers, and extra batteries) and offer the same promotions and calling plans. Although the prices are established at a national level, the Store Managers have the authority to authorize a discount on hardware or a credit on a bill, or to waive an activation fee.

The employees in the West Area retail stores and kiosks all work pursuant to the same West Area Retail Sales Operations Manual. These employees are trained to use the same 5-step selling process. After a customer selects a calling plan, a handset, and accessories, the sales representative obtains credit information and uses a centralized computer system to determine whether a deposit will be required. The sales representative can activate the wireless telephone by manually programming the telephone or by using an automated program.

The Employer has a centralized administrative structure. The employment-related policies and procedures are determined on a national level and are applied uniformly to all of the Employer's employees throughout the country. These policies include the following: attendance; family and medical leave; illness, absence, and short term disability; job abandonment; leaves of absence and other time off; vacation, personal days and holidays; drug and alcohol; standards of conduct; workplace violence; overtime; relationships at work; open communications; equal employment and affirmative action; harassment and discrimination; alternative work schedules; business appearance; performance appraisals; personnel records and company property.

The Employer maintains a uniform benefit program, which includes a savings and retirement plan; disability insurance; life insurance; accidental death and dismemberment insurance; business travel accident insurance; medical/prescription drug/dental/vision insurance; tuition assistance; and adoption assistance. The benefits for the employees represented by a labor organization differ in certain respects. Also, there are some differences in certain benefits, such as pension plans, due to the transition period from employment with legacy employers.

At the West Area level, there is an Area Executive Director of Human Resources, Dina Keefer. She reports to the Employer's Vice President for Human Resources at its corporate headquarters. Ms. Keefer is responsible for staffing, employee relations and training and development for employees in the West Area. She also ensures that the Employer's national human resources policies and procedures are consistently practiced and implemented throughout the West Area. There are seven associate directors of human resources who report to Ms. Keefer, one of whom is responsible for the employees in the Northern California/Nevada Region.

The wages and other compensation packages are determined on a national level. There are different salary bands for various jobs and there is a salary range associated with each salary band. Within a region, there are different zones and the base pay rates for zones within a region varies based upon the cost of living in the zone. Therefore, although stores in the San Francisco Bay Area are in the same region as the Bakersfield stores, employees in the Bakersfield stores, which are in Zone 3, earn a different basic pay rate than employees in the San Francisco Bay Area, which is in Zone 4.

The ASOs receive an hourly wage and a short-term incentive bonus, which is based on the employee's salary band, individual performance and company performance. They do not receive a commission. The compensation for the retail sales representatives is comprised of a base hourly wage and a commission. They also receive additional payment based on a management by objective ("MBO") program. The MBO program rewards retail sales representatives who meet certain objectives established by the West Area Finance office. The commission for retail sales representatives is based upon their ability to meet quotas relating to the number of activations, upgrades and renewals and the sale of accessories and enhancement services. Both retail sales representatives and ASOs can receive merit increases to their base pay.

The Employer's chief financial officer identifies the Employer's business targets for net additional new customers and that target is divided amongst the four areas. The West Area President disperses that target amongst the six regions in the Area. The regional target is divided into different amounts for different sales channels, including the retail stores channel. The Director of Stores and the Regional President then divide the retail stores target amongst the different stores in the Region, based upon the location, performance, size, and amount of customer traffic. The sales targets for stores are different from the sales targets for kiosks. The quota for each store or kiosk is divided equally amongst each retail sales representative at that store or kiosk, with part-time employees being assigned a proportionate target. All part-time employees are expected to meet the same target quotas, regardless of how many hours they actually work. There is an Incentive Review Board for the West Area that reviews individual situations and can award quota relief.

When the Employer first took over legacy companies, the Employer honored certain bonus, pension, and compensation programs of the legacy companies. During this transitional period, employees who came from certain legacy companies did not receive the same salary increases as other employees of the Employer. Employees at the Bakersfield stores who formerly had been employed by GTE Wireless have been subject to a different commission plan than other employees and have received an equity adjustment to their base pay that was given to the employees who previously worked for GTE. In addition, the former GTE Wireless employees at the Employer's Bakersfield stores receive different pension benefits than other employees.

The compensation for retail sales representatives and ASOs is affected by their appraisal ratings. The Store Managers evaluate employees in the retail stores and kiosks and prepare their appraisal forms. They rate the employees with respect to their contribution (the extent to which the employees accomplish objectives) and to core values (the extent to which the employees demonstrate core values, such as respect and innovation, while accomplishing objectives) and they provide an overall assessment rating. The Store Managers also make comments concerning the overall assessment and other assessment areas. After the Store Managers review the appraisals with the employees, the Store Managers sign the appraisals in the area marked for supervisor's signature. With respect to the appraisal section concerning the employees' compliance with the Employer's code of business conduct, the Store Managers primarily base their ratings upon their personal observation of the employees, as well as upon input and, at times, upon decisions by other managers responsible for ensuring compliance with that code. The District Manager also signs the appraisal.

The Regional Director of Stores testified that from time to time the District Managers make changes in the overall assessment rating on appraisals. However, he could not recall any instance where the District Manager changed an appraisal rating for any employee at any of the Bakersfield facilities. The District Manager for the district including the Bakersfield facilities testified that if he disagrees with the ratings or comments by a Store Manager, he would discuss the appraisal with the Store Manager to understand why the Store Manager made certain comments or certain ratings. If after the discussion he still believed that the appraisal was not appropriate, he might instruct the Store Manager to change a rating or to change some language. According to the District Manager, there were 92 employees in his district who were appraised during the past year and he directed Store Managers to change comments or ratings on only 3 or 4 of those appraisals. The record does not reveal whether any of those changes involved the Bakersfield facilities. The general practice is that the District Manager reviews the appraisals before they are shown to the employees. However, the District Manager does not actually sign the form until after the Store Manager reviews the appraisal with the employee.

The ratings given by Store Managers affects the short-term incentive bonuses given to ASOs as well as the amount of the merit increase given to both retail sales representatives and ASOs. As noted above, the short-term incentive bonus is based on the employee's salary band, individual performance and company performance. The Store Manager determines the amount of the individual performance modifier that is used to calculate the short-term bonus. For example, the performance modifier for employees who are rated as "meets expectations" is a range between .8 to 1.1. The Store Manager not only determines the range for the modifier by the rating he assigns to the employee, but also determines which amount within the range will be applied to determine that employee's bonus.

With respect to merit increases, the Store Managers are given an amount of money that they may distribute amongst the employees, consistent with their appraisal ratings. The new Store Manager for the Oak Street store recently explained to employees that he is given a budget for merit increases and it is within his discretion how to allocate the merit increases between the employees. The District Manager reviews the Store Manager's determination with respect to the granting of merit increases. The District Manager for the district including the Bakersfield facilities testified that of the 31 ASOs who received merit increases last year, he overruled the recommendations by Store Managers on only three or four occasions. He does not recall the circumstances of these occasions. He believes that they
may have involved inconsistencies between the ratings and what was said on the appraisal. Other higher-level executives also review merit increases to be sure they are within the budgetary allotments. They do not focus on individual increases, but rather confirm that the overall increases comply with the budgetary constraints. There is no evidence that any of the determinations by any of the Bakersfield Store Managers concerning merit increases have been overruled.

The Store Managers prepare the schedules for employees. Since part-time employees have the same quotas, regardless of the number of hours they work, the more hours the Store Manager permits them to work, the better chance they have to earn a higher commission. Also, since there are peak periods of sale activities, the particular days and hours that employees are assigned to work affects their ability to meet their quotas. The Store Managers approve requests for leaves of absences, including vacation requests. In addition, Store Managers can authorize overtime work if it is consistent with budgetary constraints.

The staffing levels for stores within a region are determined by the Director of Stores in conjunction with the Regional President and the Area Finance office. If an employee will be absent for a short period of time, the Store Manager can determine whether he can meet the staffing need by having part-time employees work more or by covering for the absent employee himself. He also may decide to ask for assistance from the Regional Operations Office. If an employee will be absent on a longer term basis, the Store Manager, the District Manager and the Area Human Resources Department would decide whether to bring in temporary help from a store in the same general area. If this situation occurred at one of the Bakersfield facilities, the additional employee(s) would be brought in from another Bakersfield facility.

If an employee quits or is terminated, the Store Manager would confer with the District Manager to confirm that the hiring of a replacement employee is consistent with the budget. Assuming that the position is budgeted, the Store Manager completes a job requisition form and forwards it to the West Area Human Resources department. The Human Resources department posts the opening on the Employer's intranet and may also advertise to fill the position. A staffing person in the West Area Human Resources department reviews the resumes to screen for minimum qualifications. The resumes of eligible candidates are forwarded to the Store Manager, who conducts interviews to select the person he would like to
hire. The Store Manager must complete a log identifying who he interviewed and explaining why he selected the candidate he chose. A staff representative for the Area Human Resources Department checks the paperwork to ensure there will not be any issues concerning perceived discrimination and the Human Resources Department must approve the selection and prepare the offer. After the offer is made, the Store Manager arranges a meeting with the prospective employee and reviews the offer and the terms of employment with the applicant. The Regional Director of Stores testified that he is not aware of any instance when a Store

Manager made a recommendation to hire somebody that was not hired. In fact, there is no evidence that any decision by a store manager to hire a particular individual has ever been reversed.

All new employees receive a similar orientation training that usually is held at the Regional headquarters, but can be held in the field. The employees also receive other additional training administered by the West Area operations office.

The Employer maintains a four-step progressive discipline program, consisting of verbal coaching or counseling, written warnings, a final written warning and termination. The Store Managers have the authority to give verbal coaching and counseling. However, the Store Managers must obtain approval from the Area Human Resources Department before issuing a written warning, a final written warning or a termination. The Human Resources Department evaluates the situation to determine whether the warning or termination is warranted based on past practices and other similarly situated circumstances.

The employees in the Bakersfield stores and kiosk regularly communicate with other Bakersfield employees to check whether another location has an item that a customer needs and that they do not have in stock. An employee from the Oak Street store testified that he speaks with employees at the Coffee Road store and the Valley Plaza kiosk on a daily basis and that he does not communicate with employees outside of the Bakersfield area. Employees from the Valley Plaza kiosk go to the Oak Street store to retrieve the overflow inventory that is stored there. The employees of the Bakersfield stores and kiosk also interact at joint meetings for employees of these Bakersfield facilities during which new promotions, new products, or performance goals are discussed. Before the Store Manager for the Oak Street store went on a medical leave, these joint Bakersfield meetings took place on a regular basis. Although these joint meetings now take place with less regularity, they do still occur. Recently, there was a meeting for all Bakersfield employees to introduce the new Store Manager of the Oak Street store and there was another joint meeting held at a Bakersfield hotel to discuss the Employer's open-door policy.

The record reveals that there were permanent transfers of employees from one Bakersfield store to another Bakersfield store. When the Coffee Street store in Bakersfield was opened, it was partially staffed by employees who permanently transferred from the Oak Street store to that location. An employee at the Valley Plaza kiosk trained for three to four weeks at the Oak Street store before transferring to the kiosk location. When temporary transfers are necessary, employees are transferred amongst clusters of stores and kiosks that are in geographic proximity to each other. For example, employees at stores in the San Francisco Bay Area may be temporarily transferred to other stores in that area and employees at a hub of stores near Sacramento may be temporarily transferred to other stores
in that same geographical hub. Apparently, there have not been many temporary transfers of employees at the Bakersfield stores because there is not a large amount of turnovers at those facilities. However, if there were a need for temporary transfers, employees would be transferred between the three Bakersfield facilities.

There is no bargaining history with respect to the employees in the petitioned-for unit. In fact, none of the retail sales representatives or ASOs employed by the Employer throughout the United States are represented by a union. There is only one unit of the Employer's employees that is represented by a labor organization. It is a unit of technical employees in the New York area that is represented by Communications Workers of America. This is a unit of employees formerly employed by a legacy company.

Even in applying the presumption that systemwide units are optimal in the public utility industry to this case, I conclude that the rationale underlying this presumption does not require a finding that the petitioned-for unit herein is inappropriate.

The record fails to establish that there is such a high degree of interdependence between the services provided by the employees at the Bakersfield stores and other segments of the Employer's operations, or between the operations of the Bakersfield and other retail store locations, to compel the inclusion of other employees in the unit. Nor does the record establish that the employees in the petitioned-for unit provide essential services. The public can purchase the Employer's products from indirect sales channels (such as other retail stores in Bakersfield) or can purchase wireless equipment and services from a competitor wireless company. Furthermore, individuals can connect their wireless phones to the Employer's network without going into one of the stores at issue herein.

As the Board noted in *Texas Electric Service Co*., 261 NLRB 1455, 1458 at fn. 13 (1982), although, in general, the Board will find a systemwide unit of public utility employees to be optimal, the Board does find less than systemwide units to be appropriate where 1) there is no recent history of bargaining on a systemwide basis; 2) the proposed unit encompasses a distinct administrative or geographical subdivision; 3) the employer invests substantial autonomy in supervisors at the unit level; and 4) no union seeks to represent employees in a larger unit. In the public utility industry, the Board regularly has found petitioned-for units of employees
in a location or locations servicing a defined geographical area to be appropriate, even where the employer has centralized employment policies and procedures and provides uniform wage rates, benefits, and other working conditions. *Texas Electric Service, supra*; *Michigan Bell Telephone,* 192 NLRB 1212 (1971); *Monongahela Power Company*, 176 NLRB 915 (1969); *Mountain States Telephone*, 220 NLRB 516 (1975); *New England Telephone and Telegraph Co*., 249 NLRB 1166 (1980). In fact, in *New England Telephone and Telegraph*, 242 NLRB 940, 943 (1979), the Board specifically noted that centralized control of policies is common to public utilities and does not by itself "constitute grounds for finding less than systemwide units in public utilities inappropriate."

In its post-hearing Brief, the Employer states that the Board has consistently applied the public utility presumption to employees who work in retail stores. The cases cited by the Employer in support of this statement are distinguishable from the situation herein. In *New England Telephone*, 258 NLRB 1284 (1981), the petitioner sought to represent a unit of employees in a residential segment of the employer's Springfield District. The residential segment includes residence service centers as well as retail phone centers. Moreover, in that case, unlike the situation herein, the Board specifically notes the evidence of significant interchange between employees in the Springfield District with employees in other districts. The other cases cited by the Employer, *New England Telephone and Telegraph Co.* 242 NLRB 940 (1979) and *New England Telephone and Telegraph Co.*, 247 NLRB 1277 (1980) also did not involve units that were limited to retail phone centers. Moreover, in *New England Telephone and Telegraph Co.* 249 NLRB 1166 (1980), the Board distinguished prior *New England Telephone and Telegraph* cases and found that a unit comprised of two business service centers was appropriate. In that case, in rejecting the employer's contention that only a systemwide unit of business center employees would be appropriate, the Board noted that the unit requested is comprised of employees located in and servicing a geographically distinct area. The Board found the requested unit appropriate notwithstanding the fact that the employer maintains a highly integrated and centrally controlled operation.

In *Mountain States Telephone & Telegraph*, 220 NLRB 516 (1975) and in *Michigan Bell Telephone Company*, 192 NLRB 1212 (1971) petitioners sought to represent employees at a particular commercial office of each employer. The Board in those cases recognized that the Board has long held that the optimum unit in public utilities is systemwide in scope, but the Board noted that the commercial office, at which employees solicit and service telephone subscriptions in a well-defined geographic area, is comparable to an outlet or territory in a selling operation. The Board in each of these cases stated that viewed in this light, the

requested unit limited to commercial department employees in a particular location is "presumptively appropriate." Therefore, even if the Board were to conclude
that systemwide units generally are optimal in the wireless industry, similar to the Board's decisions in *Mountain States* and *Michigan Bell Telephone,* I would not find that policy to be determinative here, where the unit requested involves employees at three retail stores in a geographically distinct area.

In concluding that the petitioned-for unit is appropriate, I particularly note the following facts. The employees in the petitioned-for unit work in a defined geographic area, servicing customers in the Bakersfield area. The manager of the Bakersfield stores have substantial autonomy in controlling the day-to-day activities of the employees sought. They interview and recommend employees for hire, schedule the hours of employees, grant vacations and other leaves of absences, evaluate employees and rate them in a manner that affects their compensation, and they discipline employees subject to approval from the Area Human Resources Department with respect to written warnings and terminations. Moreover, the employees at the different Bakersfield stores have contact with each other and they do not have any significant contact with other employees in the West Area. There is evidence of permanent transfers of employees between the Bakersfield stores and to the extent temporary transfers may be necessary they would occur between employees at those three Bakersfield locations. I also note the great distance between the Bakersfield stores and the other stores in the West Area. In addition, I note the lack of a bargaining history for the requested employees.

Furthermore, I conclude that a work stoppage at the Bakersfield stores would not impair the operations of the other stores in the West Area. Nor would such a work stoppage impair the ability of the public to purchase the Employer's products and services from indirect sales channels or to purchase wireless products and services from other wireless companies. I do not find that the existence of a unit limited to the Bakersfield retail stores would hinder the Employer's ability to perform any necessary functions. In these circumstances, particularly where the requested unit is comprised of employees in a geographically distinct area, the fact that the requested unit is not coextensive with an administrative subdivision of the Employer is not controlling. *New England Telephone & Telegraph*, 249 NLRB 1166, 1168 (1980).

I conclude that the employees at the Employer's three retail locations in Bakersfield share a community of interest that is separate and distinguishable from that which they share with other employees of the Employer and that is sufficient to make separate bargaining a feasible undertaking. Noting that no union seeks to represent the retail sales representatives and ASOs in a more inclusive unit, I find that the unit requested by the Petitioner is appropriate.

There are approximately 29 employees in the unit.

6/ In accordance with Section 102.67 of the Board's Rules and Regulations, as amended all parties are specifically advised that the Regional Director will conduct the election when scheduled, even if a request for review is filed, unless the Board expressly directs otherwise.

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